Supreme Court, U.S.
FILED

091043 FEB 25 2010

OFFICE OF THE CLERK

No. _____

# IN THE
# SUPREME COURT OF THE UNITED STATES

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EMIL D. ANGHEL,

*Petitioner*

vs.

SAINT FRANCIS HOSPITAL AND
MEDICAL CENTER,

*Respondent*

**On Petition For A Writ Of Certiorari To The Appellate Court Of The State Of Connecticut**

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## PETITION FOR A WRIT OF CERTIORARI

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EMIL D. ANGHEL
Petitioner, Pro Se
136 Allen Place
Hartford, CT 06106
(860) 727-9211

## QUESTIONS PRESENTED

1. Did the Appellate Court have a legal duty to obey the power of authority plus consider the findings of law pronounced in the decision of October 6, 2009, of the higher court U.S. Court of Appeals for the Second Circuit in a common ground matter previously appealed by petitioner, about which the first named court was timely and fully acknowledged prior to issuing their own decision of November 13, 2009?

2. Which is the correct filing deadline and time count out of the two possible options stipulated by the Connecticut General Statutes Sec. 52-592 Accidental failure of suit. applicable to petitioner for commencing a new action at the state court under these statutes having in view that he did not file with the U.S. Court of Appeals for the Second Circuit an appeal seeking the reversal of the district court's dismissal of the action for lack a jurisdiction but a different appeal seeking a partial revision of the clerk's office judgment for closing the case with no impact whatsoever on the redetermination of the original action?

## LIST OF PARTIES

Petitioner, Emil D. Anghel, is represented pro se.

Respondent, Saint Francis Hospital and Medical Center, is represented by Cooney, Scully and Dowling, Attorneys At Law, Hartford, Connecticut.

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E. Judgment of the U. S. District Court, District of Connecticut, Clerk's Office (October 26, 2007) ..... 7a

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# TABLE OF AUTHORITIES

The Petitioner was unable to locate any cases to be used as precedent reference having similar or identical specifics with his appeal filed with the U. S. Court of Appeals for the Second Circuit plus with his new action commenced at the Superior Court, Hartford, Connecticut under grounds of the Connecticut General Statutes Sec. 52-592.

## PETITION FOR A WRIT OF CERTIORARI

Emil D. Anghel petitions for a writ of certiorari to review the decision in this case of the Appellate Court, State of Connecticut of November 13, 2009.

## OPINIONS BELOW

The opinion of the Connecticut Appellate Court, as per their decision of November 13, 2009, App. 1a. The order of Connecticut Appellate Court on Anghel's motion for reconsideration en banc, App. 5a. The order of the Connecticut Supreme Court, denying Anghel's petition for discretionary review, App. 6a. All the above referenced decisions are unpublished.

## JURISDICTION

The Connecticut Supreme Court denied Anghel's petition for discretionary review of January 19, 2010, App. 6a. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment that "guarantees a speedy and fair trial".

The Fourteen Amendment that "prohibits states from violating due process or equal protection of the law".

The Connecticut General Statutes Sec. 52-592 Accidental failure of suit ("C.G.S. 52-592" hereinafter) that provides in relevant part as follows:

(a) If any action, commenced within the time limited by law, has failed one or more times to be tried on its merits... because the action has been dismissed for want of jurisdiction,... the plaintiff may commence a new action for the same cause at any time within one year after the determination of the original action or after the reversal of the judgment.

(d) The provisions of this section shall apply to any action brought to... the district court for the district of Connecticut which has been dismissed... because of lack of jurisdiction in such court. If such action is within the jurisdiction of any state court, the time for bringing the action to the state court shall commence from the date of dismissal in the United States court, or, if an appeal... has been taken from the dismissal, from the final determination of the appeal."

## STATEMENT OF THE CASE

This petition presents an issue concerning the correct interpretation of the provisions of the C.G.S. Sec. 52-592 and the applicability of the two filing deadlines provided by this law in Anghel's civil action commenced on October 6, 2008, on grounds of these statutes, at the Superior Court, Hartford, Connecticut against defendant Saint Francis Hospital and Medical Center.

The defendant claims that Anghel's complaint was filed prematurely and not in compliance with the second filing deadline stipulated by the C.G.S. 52-592 requiring filing after the issuance of the decision of the court of appeals if the plaintiff has appealed the district court's ruling on the dismissal of the original action while Anghel claims that his filing was proper within one year since the determination of the case since he did not appeal the district court's said ruling.

### A. Procedural Facts

Anghel commenced his original action on May 16, 2003, at the U. S. District Court, Hartford, Conn., to recover damages for, *inter alia*, false imprisonment, medical malpractice, infliction of emotional distress and violation of his constitutional rights.

On October 22, 2007, the district court dismissed the case for lack of jurisdiction – App. 7a.

On October 26, 2007, the clerk's office of the district court issued a judgment confirming the closure of the case – App. 8a.

On November 26, 2007, Anghel filed a notice of appeal with the U.S. Court of Appeals for the Second Circuit ("Court of Appeals" hereinafter), seeking a partial reformulation of the clerk's office judgment of October 26, 2007. Anghel proceeded this way since the district court declined to reopen the case for revising the draft of the clerk's office judgment – App. 10a.

On April 18, 2008, Anghel filed his brief with the Court of Appeals for his appeal of November 26, 2007. The last page 11 of this brief confirms that the purpose of his appeal referred exclusively to having said judgment reformulated in two areas that, in his opinion, needed to be revised – App. 11a.

The integral text of this brief was enclosed to plaintiff-appellant's brief filed on January 23, 2009 with the Appellate Court (Case no. 30614).

On October 6, 2008, Anghel commenced his new action at the Superior Court, Hartford, Connecticut, on grounds of the C.G.S. 52-592, filing his complaint within one year deadline after the determination of the original action as required by these statutes since he did not appeal the district court's dismissal of the case for lack of jurisdiction.

On November 7, 2008, defendant responds via motion for summary judgment seeking dismissal of plaintiff's complaint invoking as single reason its premature filing.

On December 1, 2008, the trial court (Prescott, J) grants defendant's said motion arguing that "The plaintiff's reliance on General Statutes Section 52-592 is premature in light of the pending 2nd Cir. Appeal from the district court's dismissal of the prior action."

On December 18, 2008, plaintiff files his appeal with the Appellate Court seeking the reversal of trial court's ruling with hearing held on September 8, 2009.

On October 6, 2009, the United States Court of Appeals for the Second Circuit issues its Summary Order plus Decision on Anghel's appeal of November 26, 2007 – App. 12a. (*)

On October 13, 2009, plaintiff includes on record with the Appellate Court the decision of October 6, 2009, issued by the Court of Appeals - App. 15a.

On November 13, 2009, the Appellate Court issues its decision on plaintiff's appeal of December 18, 2008, by which the trial court's ruling if affirmed. Such decision is not supported by any articulation and compounds both defendant's and trial court's judicial error regarding the misinterpretation and the misuse of the C.G.S. 52-592 on the alleged premature filing of plaintiff's complaint – App. 1a.

The Appellate Court also disobeyed the power of authority of the Court of Appeals by not standing by this higher court's precedent decision of October 6, 2009, and conflicting with its findings of law while making their own decision of November 13, 2009, in the common ground appealed matter related to the pending case at the Superior Court, Hartford, Conn. (no. CV-08-5023607-S).

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(*) The Court of Appeals inadvertently states in the first par. of its decision that Anghel appealed the district court's dismissal of his complaint for lack of jurisdiction (with no reference made to any ruling or judgment and its date), error corrected in the second par. where is pronounced that Anghel does not challenge the district court's dismissal of his case for lack of jurisdiction, meaning that the court implicitly declares that Anghel did not file any appeal seeking the reinstatement of the original action.

The Appellate Court's decision of November 13, 2009, the subsequent order "denied" of the Appellate Court of December 9, 2009, on plaintiff's motion for reconsideration en banc plus the order "denied" of the Connecticut Supreme Court of January 19, 2010, are all devoid of any articulation in their support.

### B. Legal Background

The C.G.S. Sec. 52-592 Accidental failure of suit. is the legal provision in Connecticut State that provides the terms and conditions available to the plaintiff wanting to commence a new action at the state court for the same cause whose original action with the district court failed to be tried on merits or has been dismissed for want of jurisdiction.

This law provides as follows:

First, it guarantees the plaintiff the opportunity of a new action with the state court for the same cause previously not tried on merits by the district court or dismissed for lack of jurisdiction.

Second, as per this law an appeal for "reversal of the judgment" means exactly and exclusively an appeal seeking the reversal of the determination of the original action and nothing else.

Third, it stipulates two available one year filing deadlines usable by plaintiff depending on the course of action taken after the dismissal of the original case for lack of jurisdiction, as follows: a) within one year since the determination date of the case dismissal if

no appeal seeking its reversal was taken; b) within one year after the decision of the Court of Appeals if plaintiff filed and appeal for reversal of the case dismissal and the appeal was denied. These two deadlines are not alternate options as if for some reason the plaintiff entitled to using the first option misses the deadline, he won't be able to use the second option irreparably losing his right to ever commence a new action under C.G.S. 52-592.

Fourth, the law is straightforward and self explanatory stipulating provisions that are not subject to interpretation but exact application as intended. Such as, its text clearly stipulates that the time count for "bringing the action to the state court shall commence from the date of dismissal in the United States court, or, if an appeal has been taken from the dismissal, from the final determination of the appeal."

Fifth, the law does not stipulate any requirement for plaintiff to wait first for the decision of the Court of Appeals before commencing his new action in case the plaintiff filed a different appeal not seeking the reversal of the case dismissal based on the fact that, under any circumstances, such appeal could not lead to the reinstatement of the case at the district court. Anghel's appeal of November 26, 2007, refers to the clerk's office judgment of October 26, 2007, and not to the district court's ruling to dismiss the case of October 22, 2007, with filing deadline ending November 22, 2007. Consequently, Anghel's appeal was harmless to the district court's said ruling plus could not have any impact whatsoever on the case reinstatement.

## REASONS FOR GRANTING THE PETITION

### 1. Anghel's complaint was timely filed in compliance with the C.G.S. Sec. 52-592

Anghel's complaint was timely filed within the first deadline out of the two available options since he did not file any appeal seeking the reversal of the determination of the original action. Waiting first for the decision of the Court of Appeals for using the second deadline would have been an irreversible error easily vulnerable and contestable by defendant on good cause. Anghel's only choice was the first filing option ending October 22, 2008, without losing his right to ever commence a new action under C.G.S. 52-592.

### 2. Defendant's claim on plaintiff's premature filing is groundless and meritless

The defendant's claim in his motion for summary judgment according to which Anghel availed himself of the provisions of the C.G.S. 52-592 plus that his filing was premature is groundless and meritless being devoid of any argument. In order to support his claim, the defendant willfully substitutes the district court's ruling on the case dismissal with the clerk's office judgment on the case closure with intent to mislead.

### 3. Trial court's "granted" ruling on defendant's motion for summary judgment is incorrect and unsupported

Said ruling of December 1, 2008, is based on the

misinterpretation and misuse of the C.G.S. 52-592 as follows: in order to justify the "granted" ruling on defendant's motion for summary judgment, the court willfully assimilates Anghel's different appeal to that one stipulated in the C.G.S. 52-592 for the reversal of the case dismissal. Additionally, the court wrongfully advances an opinion, even though indirectly, according to which all new actions under C.G.S. 52-592 must always commence after the date of issuance of the Court of Appeals' decision on any appeal submitted before it, regardless of its purpose and object.

### 4. The defendant, the trial court and the Appellate Court erred all by considering Anghel's appeal as one seeking the reversal of the case determination

All above named parties erred fundamentally by considering Anghel's appeal as one seeking a judgment reversal with total disregard of the different purpose and object of his appeal. Based on such false pretense, named parties wrongly concluded that Anghel's filing was premature and he had instead to wait first for the Court of Appeals' decision, then commence his new action in case his appeal was denied. This is a falsity and an unacceptable substitution based on a willful misinterpretation and misuse of the C.G.S. 52-592.

### 5. Both trial court and the Appellate Court were properly informed prior to their decisions about the purpose of Anghel's appeal

The above named parties cannot invoke the lack of knowledge about the purpose of Anghel's appeal as an excusable neglect theory since they had previous full knowledge at the time of their decisions about the contents of his brief filed on April 18, 2008, with the Court of Appeals where it is clearly stated that the purpose of his appeal was to have partially revised the clerk's office judgment of October 26, 2007, with not a single word related to the district court's ruling on case dismissal of October 22, 2007-Appxs. 10a, 11a.

### 6. The Appellate Court's decision is unsupported and a legal error

Said decision does not rely on any analysis for justifying the "affirmed" status on the trial court's ruling "granted" on defendant's motion for summary judgment not offering any opinion of law in its support it as it supposed to be drafted. There is nothing in this decision to logically and juridically support it, such decision being essentially a legal error.

### 7. The Appellate Court's decision conflicts with the findings of law of the Court of Appeals

The Appellate Court's decision of November 13, 2009, conflicts with the findings of law pronounced by the Court of Appeals in their decision of October 6, 2009, where is clearly stated that "Anghel does not challenge the district court's dismissal of his case for lack of jurisdiction." By doing so, the Appellate Court ignored the *stare decisis* legal principle from the

American jurisprudence that imposes judges an obligation to obey the precedents established by prior decisions in the sense that dicta must be followed if sufficiently persuasive, such as in this case. Although on October 13, 2009, Anghel timely filed with the Appellate Court a copy of the Court of Appeals' said decision the Appellate Court chose to ignore it.

### 8. The Appellate Court compounds the judicial error of the trial court and defendant's

By its affirmation of November 13, 2009, the Appellate Court compounded the judicial error made by the trial court as stated above instead to correct it based on the evidence on record including but not limited to the Court of Appeals' decision and findings of law and Anghel's valid arguments. As a result, the Appellate Court favored the defendant during the due process and unjustifiably denied justice to Anghel.

### 9. The Appellate Court failed its duty to correct trial's court judicial error

One of the main duties of any higher court is to properly investigate the appeals submitted before it and correct with retroactive effect incorrect decisions and legal errors of the lower courts. Instead to proceed this way plus consider the findings of law of the Court of Appeals from their decision of October 6, 2009, the Appellate Court affirmed the trial court's ruling of December 1, 2008, without providing any justification in support of their decision with result in creating a pro-

cedural advantage to defendant during the due process and unreasonably disfavoring plaintiff Anghel.

### 10. The defendant, the trial court and the Appellate Court fail to justify their claim

All above named parties claim that Anghel is wrong in regards to the applicability of the C.G.S. 52-592 but they all fail to provide a single valid argument why his complaint would suffer from any legal filing deficiency. The enclosed Appxs. 10a, 11a, 12a, clearly attest, beyond any reasonable doubt, that Anghel did not file any appeal seeking the reversal of the district court's ruling on the case dismissal, therefore his complaint was timely filed and a perfectly valid document as filed.

For all the aforegoing reasons, this Court must reverse the "affirmed" decision of the Appellate Court on trial court's "granted" decision on defendant's motion for summary judgment.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Plaintiff-Petitioner,

Emil D. Anghel, *pro se*

February 19, 2010

## APPENDICES

A. Decision of the Connecticut Appellate Court (November 13, 2009) ..... 1a

B. Order of the Connecticut Appellate Court on Plaintiff-Appellant's Motion for Reconsideration en Banc (December 9, 2009) ..... 4a

C. Order of the Connecticut Supreme Court on Plaintiff-Appellant's Petition for Certification to Appeal (January 19, 2010) ..... 5a

D. Order RE Recommended Ruling of the U. S. District Court, District of Connecticut (October 22, 2007) ..... 6a

E. Judgment of the U. S. District Court, District of Connecticut (October 26, 2007) ..... 7a

F. Notice of Appeal of Plaintiff-Appellant filed with the U.S. Court of Appeals for the Second Circuit (November 26, 2007) ..... 8a

G. Brief of Plaintiff-Appellant filed with the U. S. Court of Appeals for the Second Circuit (03-0864-CV) - Page 11 (April 18, 2008) ..... 9a

## APPENDICES - continued

H. Summary Order plus Decision of the U. S. Court of Appeals for the Second Circuit on Plaintiff's Appeal of November 26, 2007 (October 6, 2009) ..... 10a

I. Plaintiff-Appellant's Request to the Appellate Court, State of Connecticut for inclusion in evidence the decision of October 6, 2009 of the U. S. Court of Appeals for the Second Circuit (October 13, 2009)..... 13a

NOT TO BE PUBLISHED

STATE OF CONNECTICUT
APPELLATE COURT
(Hartford)

(TITLE)

EMIL D. ANGHEL v. SAINT FRANCIS HOSPITAL AND MEDICAL CENTER (AC 30614)

(JUDGES)
Flynn, C. J., and Beach and Robinson, Js.

(DATE)
Argued September 8-officially released November 13, 2009 *

(TRIAL) (Appeal from Superior Court, judicial district of Hartford, Prescott, J.)

(PROCEDURAL HISTORY)

Action to recover damages for, inter alia, false imprisonment and medical practice, and for other relief, brought to the Superior Court in the judicial district of Hartford, where the court, *Prescott, J.,* granted the defendant's motion for summary judgment and rendered judgment thereon, from which the plaintiff appealed in this court. *Affirmed.*

(COUNSEL)

*Emil D. Anghel,* pro se, the appellant (plaintiff).

*Jessica D. Meerbergen,* with whom, on the brief, was *Louis B. Blumenfeld,* for the appellee (defendant).

(OPINION)

PER CURIAM. The pro se plaintiff, Emil D. Anghel (1), appeals from the summary judgment rendered by the trial court in favor of the defendant, Saint Francis Hospital and Medical Center. Having considered the respective arguments advanced by the parties, we note that no issues of material fact were in dispute and the plaintiff's appeal of his original action was still pending before the United States Court of Appeals for the Second Circuit at the time he brought the action in state court. Accordingly, we conclude that the plaintiff's reliance on General Statutes Sec. 52-592 (2) was premature (3). The court properly granted the motion for summary judgment.

The judgment is affirmed.

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• November 13, 2009, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

1 Where a layman appears pro se, the court follows a liberal policy and carefully considers a pro se party's claims as far as they are fairly presented upon the record to ensure that no injustice has been done to him under the law. See *Goldstein v. Fischer,* 200 Conn. 197, 198, 510 A.2d 184 (1986). Nevertheless, while the plaintiff is afforded this latitude, the court is equally cognizant that "the right of self-representation provides no attendant license not to comply with relevant rules of procedure and substantive law." (Internal quotation marks omitted.) *New Haven v. Bonner,* 272 Conn. 489, 498, 863 A.2a 680 (2005).

2 General Statutes Sec. 52-592, the accidental failure of suit statute, provides in relevant part: "(a) If any action, commenced within the time limited by law, has failed one or more times to be tried on its merits because of insufficient service or return or the writ due to unavoidable accident or the default or neglect of the officer to whom it was committed, or because the action has been dismissed for want of jurisdiction, or the action has been otherwise avoided or defeated by the death of a party or for any matter

of form; or ir, in any such action after a verdict for plaintiff, the judgment was been set aside, or if a judgment of nonsuit has been rendered or a judgment of the plaintiff reversed, the plaintiff ... may commence a new action... for the same cause at any time within one year after the determination of the original action or after the reversal of the judgment...

"(d) The provisions of this section shall apply to... any action brought to the United States circuit or district court for the district of Connecticut which has been dismissed without trial upon its merits or because of lack of jurisdiction in such court, the time for bringing the action to the state court shall commence from the date of dismissal in the United States court, or, if an appeal or writ or error has been taken from the dismissal, from the final determination of the appeal or writ or error..."

3 We take judicial notice that on October 6, 2009, the Second Circuit dismissed the plaintiff's federal appeal. That dismissal does not affect our analysis of the issues in the present case because it occurred after the trial court rendered summary judgment on the plaintiff's state claim.

NOT TO BE PUBLISHED

APPELLATE COURT STATE OF CONNECTICUT
(Hartford)

AC 30614

Emil D. Anghel
v.
Saint Francis Hospital and Medical Center

DECEMBER 9, 2009

ORDER

The motion of the plaintiff-appellant, filed November 18, 2009, for reconsideration en banc, having been presented to the court, it is hereby ORDERED DENIED.

By the court,
Susan Reeve
Assistant Clerk-Appellate

Notice sent: December 9, 2009
Emil D. Anghel, self-represented party
Cooney, Scully & Dowling
Hon. Eliot D. Prescott
Clerk, Hartford JD (CV08-5023607S)
Reporter of Judicial Decisions

NOT TO BE PUBLISHED

SUPREME COURT STATE OF CONNECTICUT
(Hartford)

NO. PSC 09-0247

Emil D. Anghel
v.
Saint Francis Hospital and Medical Center

ORDER ON PETITION FOR CERTIFACTION TO APPEAL

On consideration of the petition by the plaintiff for certification to appeal from the Appellate Court (118 Conn. App. 139 [AC 30614]). It is hereby ordered that said petition be, and the same is hereby denied.

BY THE COURT,
ALAN M. GANUSCIO
ASSISTANT CLERK-APPELLATE

Dated: 1/19/2010
Notice sent: 1/19/10
Clerk, Superior Court, Hartford, CV08 5023607
Clerk, Appellate Court
Reporter of Judicial Decisions
SAO
Emil D. Anghel, self represented party
Cooney, Scully & Dowling
Emil D. Anghel, self represented party, in support of petition; Jessica D. Meerbergen in opposition.

NOT TO BE PUBLISHED

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

| | | |
|---|---|---|
| EMIL D. ANGHEL, | : | |
| Plaintiff | : | |
| v. | : | CASE NO. |
| SAINT FRANCIS HOSPITAL | : | 3:03CV864 (AWT) |
| AND MEDICAL CENTER, | : | |
| Defendant | : | |

ORDER RE RECOMMENDED RULING

Upon review and pursuant to 28 U.S.C. Sec. 636(b) and Rule 72.2 of the Local Rules for United States Magistrate Judges (D. Conn.), Magistrate Judge Martinez's Recommended Ruling (Doc. no. 212) is hereby ACCEPTED, over objection. This case is hereby dismissed for lack of subject matter jurisdiction.

The clerk shall close this case.

It is hereby ordered.

Dated this 22nd day of October 2007, at Hartford, Connecticut.

/s/ Alvin W. Thompson
United States District Judge

NOT TO BE PUBLISHED

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICT

| | | |
|---|---|---|
| EMIL D. ANGHEL, | : | |
| v. | : | CASE NO. |
| SAINT FRANCIS HOSPITAL & MEDICAL CENTER | : | 3:03CV864 (AWT) |

JUDGMENT

This action having come on for consideration of the second amended complaint before the Honorable Donna F. Martinez, United States Magistrate Judge, and Alvin W. Thompson, United States District Judge, and,

Having considered the full record of the case including applicable principles of law, and having filed a recommended ruling dismissing the second amended complaint for lack of subject matter jurisdiction, and the court having accepted the recommended ruling over objection, it is therefore,

ORDERED, ADJUDGED AND DECREED that judgment be and is hereby entered in favor of the defendant Saint Francis Hospital and Medical Center, and this case is dismissed.

Dated at Hartford, Connecticut, this 26th day of October, 2007.

ROBERTA D. TABORA, Clerk

by /s/ SLS
Sandra Smith
Deputy Clerk

NOT TO BE PUBLISHED

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIVIL CASE NO. 3:03CV0864 (AWT)

Emil D. Anghel
v.
Saint Francis Hospital and Medical Center

NOTICE OF APPEAL

1. Pursuant to F.R.A.P. 4(a)(1), Emil D. Anghel (appealing party) hereby gives notice and appeals to the United States Court of Appeals for the Second Circuit from the following judgment or Order (attach the Judgment or Order):

JUDGMENT OF OCTOBER 26, 2007, SIGNED BY SANDRA SMITH, DEPUTY CLERK, U.S. DISTRICT COURT, HARTFORD, CT

2. The Judgment/Order in this action was entered on October 26, 2007

/s/ Emil D. Anghel
Emil D. Anghel, pro se
136 Allen Place
Hartford, CT 06106
Tel. (860) 727-9211

Date: November 26, 2007

Judgment encl. - Same as in App. 7a

NOT TO BE PUBLISHED

03-0864-cv
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Emil D. Anghel, Plaintiff-Appellant v. Saint Francis Hospital and Medical Center, Defendant-Appellee
On Appeal from the United States District Court for the District of Connecticut

BRIEF for the Plaintiff-Appellant Emil D. Anghel

We therefore respectfully ask that this Court vacate the trial court's Judgment of October 26, 2007, and order its replacement with a reformulated judgment stating in relevant part that the case was closed due to lack of jurisdiction pursuant to Rule 41(2)(b) of F.R.C.P. and court's order of October 22, 2007, with no adjudication of the case of favor of plaintiff or defendant.

Done and signed at Hartford, Connecticut, on April 18, 2008.

Respectfully submitted,
Emil D. Anghel, Pro Se
Plaintiff-Appellant

NOT TO BE PUBLISHED

07-5208-cv
Anghel v. Saint Francis Hosp.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY JUDGMENT DO NOT HAVE PRECENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 21.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT HTTP://WWW.CA2.USCOURTS.GOV IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATA BASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET

NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 6th day of October, two thousand nine.

PRESENT: CHESTER J. STRAUB,
BARRINGTON D. PARKER,
DEBRA ANN LIVINGSTON,
Circuit Judges

UNITED STATES OF APPEALS SECOND CIRCUIT
FILED OCT 06 2009 07-5308-cv

DECISION

FOR APPELLANT: Emil D. Anghel, *pro se,*
Hartford, CT.
FOR APPELLEE: Louis B. Blumenfeld, Cooney,
Scully & Dowling, Hartford, CT.

Appeal from a judgment of the United States District Court for the District of Connecticut (Thompson, J.).

UPON CONSIDERATION IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the appeal be DISMISSED.

Appellant Emil D. Anghel, *pro se,* appeals the district court's dismissal of his complaint for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P.

12(h)(3), and moves to reject the Defendant-Appellee's brief as improperly filed. We assume the parties' familiriaty with the underlying facts, the procedural history of the case, and the issues on appeal.

We review *de novo* the district court's dismissal of a complaint for lack of subject matter jurisdiction. *See Scherer v. Equitable Life Assurance Soc'y,* 347 F. 3d, 394, 397 (2d Cir. 2003). However, because Anghel does not challenge the district court's dismissal of his case for lack of jurisdiction, he has abandoned the only justiciable issue now before us, warranting the dismissal of his appeal. *See LoSacco v. City of Middletown,* 71 F.3d 88, 92-93 (2d Cir. 1995) (holding that when a litigant, even if proceeding *pro se,* raises an issue before the district court but does not raise it on appeal, it is abandoned). (1)

For the foregoing reasons, the appeal is hereby DISMISSED, and Anghel's motion to reject the Defendant-Appellee's brief is DENIED as moot.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

By: /s/ Frank Perez

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(1) We note that the district court's dismissal of Anghel's claims for lack of subject matter jurisdiction in no way precludes him from pursuing his claims in state court. This fact should not be construed, however, as any comment by us as to the merits of Anghel's claims.

NOT TO BE PUBLISHED

Plaintiff-Appellant Anghel's Request To The Appellate Court For Inclusion Of Document Into Evidence

October 13, 2009

APPELLATE COURT
State of Connecticut
APPELLATE CLERK'S OFFICE
Attn: Susan Reeve, Attorney
231 Capitol Avenue
Hartford, CT 06106

Re: Case A.C. 30614 Anghel v. Saint Francis Hospital
Request for inclusion of document into evidence

Dear Attorney Reeve:

The plaintiff-appellant in the above referenced case requests by the present to have included into evidence the following document that has never been available for review by the Appellate Court including at the time of the hearing of September 8, 2009.

– The decision of October 6, 2009, entered by the U.S. Court of Appeals for the Second Circuit for the plaintiff's appeal of November 26, 2007 re: case no. 07-5308-CV (AWT) Anghel v. Saint Francis Hospital (original action filed by plaintiff on May 15, 2003 with the U.S. District Court, Hartford, Conn.) - Summary Order plus decision (2 pages).

The decision of the Appellate Court, Hartford, Conn.

in the case no. A.C. 30614 of December 18, 2008, is still pending at this time.

The plaintiff-appellant considers that the panel of three judges handling the case A.C. 30614 should be informed about this decision of the U.S. Court of Appeals for the Second Circuit of October 6, 2009, having in view the significance, importance and impact on the said pending case with the Appellate Court.

According to the findings of law contained in the said decision of October 6, 2009, the U.S. Court of Appeals for the Second Circuit:

1. dismissed plaintiff's appeals of November 26, 2007, since Anghel did not challenge the district court's dismissal of his case for lack of jurisdiction with result in abandoning the only justiciable issue before the said court of appeals;

2. determined that by his appeal of November 26, 2007, Anghel did not seek the reversal of district court's ruling on dismissal of the case due to lack of jurisdiction or of any other judgment, nor raising any issue in his appeal to be reviewed and decided by the court of appeals.

Consequently, this decision of the U.S. Court of Appeals for the Second Circuit affirms and supports plaintiff's position in the following matters: 1. the plaintiff's complaint of October 6, 2008, was timely filed within one year after the determination of the original case pursuant to Conn. Gen. Stat. Sec. 52-

592(a), therefore valid; 2. the defendant's claim according to which plaintiff's complaint was prematurely filed is baseless, therefore his motion for summary judgment of November 7, 2008, has no merit; 3. the defendant's contention according to which the plaintiff supposed to wait first for the decision of the U.S. Court of Appeals then file his complaint lacks any logical and juridical grounds; 4. in light of the above arguments, trial court's ruling of December 1, 2008, is incorrect.

The plaintiff-appellant asks this honorable court to consider the enclosed decision of October 6, 2009, of the U.S. Court of Appeals in addition to his arguments presented in his brief of January 23, 2009, and at the hearing of September 8, 2008.

WHEREFORE, the plaintiff-appellant asks again this honorable court to vacate the trial court's ruling of December 1, 2008, and reverse it from "granted" to "denied" on defendant's motion for summary judgment of November 7, 2008.

Respectfully submitted,

Emil D. Anghel, Plaintiff *pro se*
136 Allen Place
Hartford, CT 06106
Tel. (860) 727-9211

Encl. 2 – Same as in App. 10a